

United States District Court

FILED

NORTHERN DISTRICT OF CALIFORNIA

OCT X 5 2007

UNITED STATES OF AMERICA

V.

Abel Lopez-Menera

AKA: Jose Lopez-Martinez, Bernabe Banderas Lopez

Venue: San Francisco

RICHARD W. WIEKING
U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CRIMINAL COMPLAINT

EMC

CASE NUMBER:

3 07 70580

I, the undersigned complainant being duly sworn, state the following is true and correct to the best of my knowledge and belief. On or about May 7, 2007 in Marin County, in the

Northern District of California defendant(s) did,

OFFENSE:

SEE ATTACHMENT A

in violation of Title 8 United States Code, Section(s) 1326.

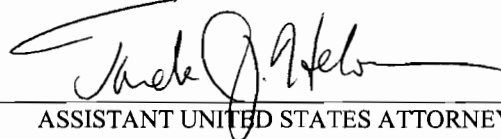
I further state that I am a(n) Deportation Officer and that this complaint is based on the following facts:

Official Title

SEE ATTACHED AFFIDAVIT MADE A PART HEREOF

PENALTIES: Imprisonment for not more than ten (10) years and/or a fine of not more than two hundred fifty thousand (\$250,000.00) dollars, a one-hundred (\$100.00) dollar special assessment, and three (3) years supervised release.

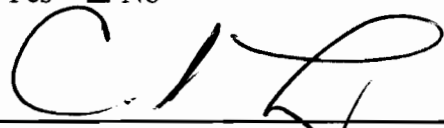
APPROVED AS TO FORM:


ASSISTANT UNITED STATES ATTORNEY

Continued on the attached sheet and made a part hereof: ☒ Yes ☐ No

Warrant of Arrest Requested ☒ Yes ☒ No

Bail Amount: **NO BAIL**

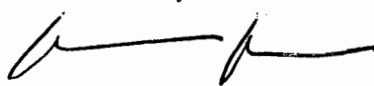

Signature of Complainant

Sworn to before me and subscribed in my presence,

10/5/07 at San Francisco, California
Date City and State

Honorable Nandor J. Vadas
United States Magistrate Judge

Name & Title of Judicial Officer



Signature of Judicial Officer

ATTACHMENT A

On or about May 7, 2007, the defendant, Able Lopez-Menera (AKA: Jose Lopez-Martinez and Bernabe Banderas Lopez), an alien having been previously deported from the United States, was found in Marin County, in the State and Northern District of California, without having obtained express consent for reapplication for admission from either the Attorney General of the United States or his successor, the Secretary for Homeland Security (Title 6, United States Code, Sections 202(3), (4) and 557).

STATE AND NORTHERN DISTRICT OF CALIFORNIA)
) ss, AFFIDAVIT
 CITY AND COUNTY OF SAN FRANCISCO)

The undersigned, being duly sworn, states:

I. INTRODUCTION

1. My name is Cesar Lopez, and I have been a Deportation Officer with the U.S. Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), formerly the U.S. Department of Justice (DOJ), Immigration and Naturalization Service (INS), for approximately nineteen years. I am currently assigned under the Field Office Director, San Francisco, California (FOD/SF) in the Detention and Removal Operations Division. I am presently assigned to the Prosecutions Unit of the Criminal Alien Program (CAP), a group that is responsible for enforcing federal criminal statutes involving criminal aliens who reenter the U.S. illegally.

CRIMINAL COMPLAINT

2. I am applying for an ~~arrest warrant~~ for ABEL LOPEZ-MENERA (AKA: JOSE LOPEZ-MARTINEZ and BERNABE BANDERAS LOPEZ) for violating Title 8, U.S. Code, Section 1326 (alien found in the U.S. following deportation). Under Section 1326, it is a crime for an alien who was previously denied admission, excluded, deported, or removed from the U.S., to enter, attempt to enter, or be found at any time in the U.S. if the Attorney General or Secretary of Homeland Security did not expressly consent to a reapplication by the alien for admission into the U.S.

3. ~~As set forth below~~, I believe that probable cause exists to support a complaint and ~~arrest warrant~~ against LOPEZ-MENERA for violating Section 1326. The facts set forth in this Affidavit are based on my review of LOPEZ-MENERA's official ICE file (number A75 540 638), my personal observations, my training and experience, and where noted, information related to me by other law enforcement officials. However, the facts set forth in this Affidavit are not all facts known to me relating to LOPEZ-MENERA.

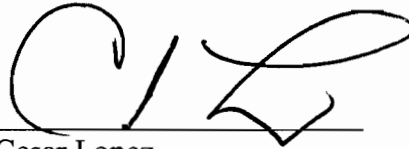
II. STATEMENT OF PROBABLE CAUSE

4. ABEL LOPEZ-MENERA, also known as JOSE LOPEZ-MARTINEZ and BERNABE BANDERAS LOPEZ, is a thirty-seven year old male who is a native and citizen of Mexico. LOPEZ-MENERA last entered the U.S. illegally by voluntarily crossing the international border with Mexico at or near, San Ysidro, California on an unknown date in 1999. LOPEZ-MENERA knowingly remained in the U.S. without first having obtained consent to reapply for admission from the Attorney General or the Secretary of Homeland Security.

5. LOPEZ-MENERA's official ICE file contains one executed Warrant of Removal. This Warrant of Removal indicates that LOPEZ-MENERA was last removed from the U.S. to Mexico at Calexico, California, on October 16, 1998.
6. On May 7, 2007, ICE officers were contacted by officers at San Quentin State Prison, who advised the ICE agents that LOPEZ-MENERA was serving a sentence for a felony conviction of annoying or molesting a minor after entering a dwelling without consent (California Penal Code Section 647.6(b)). ICE placed immigration detainers on LOPEZ-MENERA on May 16, 2007 and August 7, 2007.
7. On September 24, 2007, Immigration Enforcement Agent James Johantgen interviewed LOPEZ-MENERA at the ICE District Office in San Francisco. After LOPEZ-MENERA was advised of his Miranda rights and the right to speak with the consular or diplomatic officers of his country of citizenship, LOPEZ-MENERA waived those rights and provided a sworn statement in which he admitted that he was a citizen of Mexico and that he had been previously deported from the U.S. ICE Agent Michael Shan witnessed this interview.
8. Based on my professional experience, I believe that LOPEZ-MENERA voluntarily entered and knowingly remained in the United States because he was found at a location other than a border of the United States and because he was serving a prison sentence for a crime he committed at a location other than a border of the United States.
9. On October 4, 2007, a full set of fingerprints belonging to LOPEZ-MENERA was submitted to the Automated Fingerprint Identification Center for verification of identity. The fingerprint examiner positively identified the fingerprint as belonging to LOPEZ-MENERA, who was previously removed from the United States as discussed above.
10. There is no indication in ICE's official files that LOPEZ-MENERA has applied for or been granted the requisite permission to reenter the U.S. from either the Attorney General or the Secretary of Homeland Security. In his sworn statement, LOPEZ-MENERA also stated that he had not applied to the Attorney General or Secretary of Homeland Security for permission to reenter the U.S. after deportation.

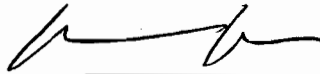
II. CONCLUSION

10. On the basis of the above information, I submit that probable cause exists to believe that ABEL LOPEZ-MENERA, also known as JOSE LOPEZ-MARTINEZ and BERNABE BANDERAS LOPEZ, illegally reentered the U.S. following deportation, in violation of Title 8, U.S. Code, Section 1326.



Cesar Lopez
Deportation Officer U.S. Department of Homeland
Security
U.S. Immigration and Customs Enforcement
San Francisco, California

Subscribed and sworn to before me this 5th day of October 2007.



The Honorable Nandor J. Vadas
United States Magistrate Judge
Northern District of California
San Francisco, California